

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL
RECEIVED

MAR 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98
DA 97-405

RECEIVED

MAR - 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

AT&T CORP. COMMENTS ON PENNSYLVANIA PUBLIC UTILITY
COMMISSION'S PETITION FOR EXPEDITED WAIVER OF TEN-DIGIT DIALING
REQUIREMENT FOR 412 NPA OVERLAY

Pursuant to Section 1.3 of the Commission's Rules and its Public Notice released February 25, 1997, AT&T Corp. ("AT&T") hereby comments on the Pennsylvania Public Utility Commission's ("PUC") petition for a waiver of 47 C.F.R. § 52.19's requirement that it implement mandatory 10-digit dialing as an element of its overlay relief plan for the 412 NPA.¹

The PUC offers two arguments in support of its waiver request: First, it contends that the present availability of interim number portability ("INP"), and the projected availability of permanent number portability ("PNP") by mid-1998 in the

¹ Although the PUC captions its petition as a request for a "waiver," in the alternative it appears to seek expedition of its petition for reconsideration of the 10-digit dialing requirement imposed by the Commission's Second Report and Order in CC Docket No. 96-98. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-333, released August 8, 1996 ("Second Report and Order"). By these comments, AT&T opposes both forms of relief.

AT&T Corp.

No. of Copies rec'd
List ABCDE

624

March 7, 1997

Pittsburgh MSA, "diminishes" the concerns that led the Commission to conclude in its Second Report and Order that NPA overlay relief plans would be anticompetitive in the absence of 10-digit dialing.² Second, the PUC asserts that there will be adequate NXX codes to meet unspecified "current projections" of CLECs' demand for such numbering resources in the 412 NPA for a likewise unspecified future period.³ Neither of these contentions can carry the substantial burden the PUC must shoulder in seeking a waiver of the Commission's 10-digit dialing requirement for NPA overlays.⁴

I. The Projected Availability Of Number Portability Does Not Ameliorate The Anticompetitive Effects of the PUC's Proposal

The Commission established timetables and other criteria for both INP and PNP in its Number Portability Order,⁵ which it released on July 2, 1996, more than a month before the Second Report and Order. The Commission thus was well aware of its own local number portability implementation schedule when it adopted its 10-digit dialing requirement for overlay relief plans, and it concluded that portability measures alone were not sufficient to eliminate the potential anticompetitive effects of overlays. The PUC's

² Petition of the Pennsylvania Public Utilities Commission For Expedited Waiver Of The 10-Digit Dialing Requirement Of 47 C.F.R. § 52.19 For 412 NPA Overlay Area Code Relief, in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, February 14, 1997, at 6 ("PUC Petition for Waiver").

³ Id., at 7.

⁴ The instant petition does not challenge the Commission's authority to impose 10-digit dialing for overlay NPAs. See 47 U.S.C. § 251(e)(1) (Commission has "exclusive jurisdiction" over all aspects of numbering within United States).

⁵ Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, released July 2, 1996 ("Portability Order").

portability argument thus presents no information that the Commission has not previously considered, and does not describe the sort of extraordinary circumstances that might justify a waiver of the Commission's 10-digit dialing requirement.

Moreover, the availability of number portability does not even address the fundamental concern that led the Commission to mandate 10-digit dialing for NPA overlays. The Second Report and Order sought to avoid creating dialing disparity between ILECs' customers and those served by CLECs. In an overlay situation, ILECs likely will have "warehoused" a significant quantity of numbers in the old NPA,⁶ and so will be able to continue assigning new numbers in what the Commission recognizes is the more "desirable" old area code.⁷ CLECs, however, will be forced to assign numbers chiefly from the less-populated, less desirable new NPA. As the Second Report and Order holds, if CLEC customers must dial 10 digits to reach numbers in the old area code (where most subscribers will remain, at least for some initial period of unforeseeable duration),

⁶ Assertions by some ILECs that the Commission should not hold that they have "warehoused" numbers because it has not found that they have engaged in any misconduct as Numbering Administrators simply miss the point. There will inevitably be some numbers in an existing NPA that have not yet been assigned, even when exhaust is sufficiently imminent to require NPA relief. Also, customers who move away from an ILEC's service area or who transfer their service to a CLEC but do not port their numbers will free additional numbers in the old NPA for the ILEC's use. Thus, the "warehousing" of numbers in the old NPA may be a natural byproduct of ILECs' current status as monopoly providers of local service in existing area codes. However, as the Commission has recognized, ILECs should not be permitted to leverage this artifact of their current monopolies by taking advantage of dialing disparities that would result from 7-digit dialing in an overlay situation.

⁷ See Second Report and Order, ¶ 288.

while ILEC customers need dial only 7 digits, customers will find it less attractive to switch carriers, thus disadvantaging CLECs.

Number portability measures are not sufficient to resolve this problem. As AT&T showed in its petition for reconsideration of the Second Report and Order, the Commission has previously found that interim portability methodologies will impair “the quality, reliability, and convenience of telecommunications services” offered by new entrants into local markets.⁸ Accordingly, some customers may not be willing to accept lower quality service and so may opt not to port their numbers until PNP is fully implemented, choosing instead either to obtain a new telephone number in the overlay NPA or simply to remain with their incumbent LEC.⁹ The eventual availability of permanent portability measures is also insufficient to eliminate dialing disparity under the PUC’s proposal. For example, customers who are new to an ILEC’s service area will not be able to port a number from the old NPA. A CLEC thus may be forced to offer them a number in the new NPA, while an ILEC will have access to warehoused numbers in the

⁸ See AT&T Petition For Limited Reconsideration And Clarification, filed October 7, 1996, at 8-9, and AT&T Reply To Oppositions To Petition For Limited Reconsideration And Clarification, filed December 2, 1996, at 4-5, in Second Report and Order (quoting Portability Order, ¶ 110).

⁹ As AT&T also demonstrated in its petition for reconsideration of the Second Report and Order, the potential degradation in quality caused by interim portability methodologies may dissuade some customers from switching to a CLEC where an overlay NPA is in place because by doing so they will be forced to change not only their 7-digit telephone number, but their NPA as well. In order to avoid placing this significant incremental burden on CLECs seeking to enter local markets, AT&T urges the Commission to require implementation of permanent local number portability as a precondition to any NPA overlay.

old area code. Further, assuming there are no delays in the implementation of the Commission's schedule, PNP will not be available in the 412 area code for well over a year.

II. The PUC's Projections Of NXX Code Availability Are Speculative And Unsupported, And Do Not Avoid The Anticompetitive Effects Of 7-Digit Dialing In Any Event

The PUC purports to provide new information concerning the availability of NXX codes in the 412 area code, which it contends warrant the waiver it seeks. However, the petition simply does not place anything approaching adequate information in the record to permit the Commission or commenters to evaluate the PUC's new claims that "based upon current projections," CLECs will have access to telephone numbers in the 412 NPA even after that area code's NXX codes reach exhaust.¹⁰ The PUC nowhere reveals how many CLECs and other competitors it projects will seek NXX codes in the 412 NPA, at what rate they will enter, or how quickly they are predicted to gain market share. Nor does the petition indicate what it expects will be the pace of deployment of technologies such as wireless devices, fax machines, and point-of-sale terminals. In fact, the PUC does not even disclose the year in which it anticipates that NXX codes in the 412 NPA will reach exhaust, much less provide sufficient information to support that assumption. Neither the Commission nor commenters can make a reasoned evaluation of the PUC's sketchy findings, and its petition can and should be denied on that basis.

¹⁰ PUC Petition for Waiver, at p. 7. In its petition for reconsideration of the Second Report and Order, the PUC opposed even that order's extremely limited requirement that CLECs be permitted to obtain a single NXX in an existing area code prior to an overlay. See Pennsylvania Public Utilities Commission, Petition For Reconsideration, filed October 7, 1996, at 5, in Second Report and Order.

More fundamentally, even if the PUC had provided supporting data for its claims, the Commission would nevertheless be compelled to reject them. The PUC projects that as of the unspecified date that NXX codes in the 412 NPA reach exhaust, "CLECs or other competitors will control ... one of every three usable NXXs" in that area code.¹¹ This means, of course, that incumbent LECs will control over two-thirds of the central office codes in the old, more desirable NPA. Moreover, a single ILEC, Bell Atlantic, will control the bulk of these resources, while many CLEC competitors will be forced to share the one-third of NXX resources allocated to them. Thus, no single competitor will have access to more than a tiny fraction of the NXX codes in the 412 NPA held by the BOC incumbent. Such an outcome cannot reasonably be deemed to provide competitive parity with Bell Atlantic, nor can this approach be squared with the Commission's prior interpretations of Congress' mandate that it adopt procompetitive numbering policies. As the Commission succinctly described its mission in a recent order, "we have attempted, wherever possible, to ensure that new telecommunications carriers have access to numbering resources on the same terms as incumbents."¹²

Further, it is impossible to predict with confidence that the PUC's proposal would be adequate to permit CLECs to provide telephone numbers in the old NPA to all of their customers who may desire them. The Commission is embarking on an unprecedented effort to open the nation's telephone markets to competition. Literally

¹¹ PUC Petition for Waiver, at p. 7.

¹² The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 92-105, FCC 97-51, released February 19, 1997.

thousands of individuals and companies are attempting to predict how rapidly and how successfully new entrants will penetrate local markets. In addition, the pace of competitive entry almost certainly will vary state-by-state, if not NPA-by-NPA. In this volatile climate, it would be both unreasonable and unwise for the Commission to attempt to draw an arbitrary line which would offer CLECs unequal access to numbering resources based on speculation concerning degrees of inequality. Indeed, such a policy would, in effect, constitute a cap on the market share that competitors can obtain before they are forced to suffer the handicap of the dialing disparities the Commission sought to avoid by mandating 10-digit dialing for overlays.¹³

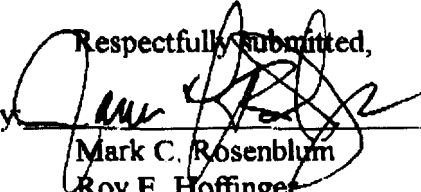
Finally, the certainty afforded by the current, bright-line rule on 10-digit dialing should not be jettisoned in favor of successive Commission reviews of NPA overlay plans. In order to grant the instant waiver request, the Commission would have to examine the PUC's numbering resources projections and permit the public a meaningful opportunity to comment on them, and then make a reasoned finding that there will in fact be adequate NXX codes in the 412 NPA to supply competitors' anticipated needs in that

¹³ The Commission should also take note that it is Bell Atlantic -- the ILEC that will obtain the lion's share of NXX codes in the 412 NPA -- that serves as Code Administrator for that area code. Moreover, despite the clear mandate of the Second Report and Order, Bell Atlantic's advertising plainly states that after the planned overlay of the 412 NPA, telephone customers in that area code will be able to dial other numbers in the 412 NPA by dialing only 7-digits. See, e.g., Bell Atlantic advertisement in February 4, 1997 Pittsburgh Post-Gazette, attached as Exhibit 1 (stating that after the 412 NPA overlay, customers "will only have to dial an area code when it's different from the one you're calling from"). Thus, the PUC's petition rests not on the forecasts of a disinterested Code Administrator, but on studies by a for-profit enterprise with an obvious stake in the outcome of the instant proceeding.

particular market. Requests for waivers of 10-digit dialing in other area codes would require similar analyses and public comment, introducing significant uncertainty and delay into NPA relief planning -- and into carriers' planning as well. As the Commission recognized in the Second Report and Order, the adoption of "uniform national standards" such as its 10-digit dialing requirement for NPA overlays "will speed competitive entry by more promptly opening the local and toll markets to competition."¹⁴

CONCLUSION

For the reasons stated above, the Commission should deny the Pennsylvania Public Utilities Commission's request that it waive or reconsider the Second Report and Order's requirement of 10-digit dialing for overlay NPA relief plans.

Respectfully submitted,
By 
Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.

Its Attorneys

295 North Maple Avenue
Room #3247H3
Basking Ridge, New Jersey 07920
(908) 221-4617

March 7, 1997

¹⁴ Second Report and Order, ¶ 25.

EXHIBIT 1

PITTSBURGH POST-GAZETTE, THURSDAY, FEBRUARY 4, 1977

(724)

There are millions of numbers
inside these parentheses.

Area code (724) is coming soon to western Pennsylvania.

Increasingly, a great many western Pennsylvanians enjoy the convenience of telephones, toll phones, fax machines, pagers, and modems. All this technology combined with new local competition, has resulted in a need for more new telephone numbers. Just by adding another area code, we can get these millions of new phone numbers which are needed.

So if you're in the (412) region, we'd like to offer

this opportunity to introduce you to the new (724) area code, officially starting May 1st. Don't worry, it does not mean your phone number is changing. Only some of the new numbers that will be added after May 1st will get the new (724) code.

Your area will not change either, nor will your local calling area. Therefore, even if you sometimes call local businesses get the (724) code, only to find numbers will be local calls.

In addition, you'll only have to dial an area code when it's different from the one you're calling. But to make the transition easier, it's better to get in the habit of dialing a three-digit area code whenever you exchange numbers.

As always, please feel free to call with any questions you might have at 1-800-422-2607. Our toll-free lines are open Monday through Friday from 9-5. We will be happy to help you in any way we can.

For more information please visit our Service Point on the Internet or telephone 1-800-422-2607.

Bell Atlantic
THE BELL OF COMMUNICATION